

STATE OF MICHIGAN  
CIRCUIT COURT FOR THE 30<sup>TH</sup> JUDICIAL DISTRICT  
INGHAM COUNTY

LINDA A. WATTERS, COMMISSIONER,  
OFFICE OF FINANCIAL AND INSURANCE SERVICES  
FOR THE STATE OF MICHIGAN,

Petitioner,

vs.

File No. 03-1127-CR

THE WELLNESS PLAN,  
a Michigan Health Maintenance Organization,

Hon. William E. Collette

Respondent.

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GEOFFREY N. FIEGER (P30441)  
REBECCA S. WALSH (P45331)  
VICTOR S. VALENTI (P36347)  
Attorneys for Claimant  
FIEGER, FIEGER, KENNEY & JOHNSON, P.C.  
19390 W. Ten Mile Road  
Southfield, MI 48075  
(248) 355-5555

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**NOTICE OF APPEARANCE**

TO: LINDA A. WATTERS, COMMISSIONER,  
OFFICE OF FINANCIAL AND INSURANCE SERVICES  
FOR THE STATE OF MICHIGAN

THE WELLNESS PLAN

PLEASE TAKE NOTICE that FIEGER, FIEGER, KENNEY & JOHNSON, P.C.,  
by GEOFFREY N. FIEGER, REBECCA S. WALSH and VICTOR S. VALENTI, have  
this day filed their notice of appearance of counsel for Shennae Lewis, Individually and as

Next Friend of Tra' Markis Lewis, a Minor, in the above-captioned matter.

Respectfully submitted,



GEOFFREY N. FIEGER (P30441)  
REBECCA S. WALSH (P45331)  
VICTOR S. VALENTI (P36347)  
FIEGER, FIEGER, KENNEY & JOHNSON, P.C.  
Attorneys for Claimant  
19390 W. Ten Mile Road  
Southfield, MI 48075-2463  
(248) 355-9482

Dated: April 20, 2005

STATE OF MICHIGAN  
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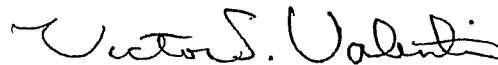
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APPEARANCE

FIEGER, FIEGER, KENNEY & JOHNSON, P.C., by GEOFFREY N. FIEGER,  
REBECCA J. WALSH and VICTOR S. VALENTI, hereby appear as counsel for Shennae  
Lewis, Individually and as Next Friend of Tra' Markis Lewis, a Minor, in the above-  
captioned matter.

Respectfully submitted,

DATED: April 20, 2005



GEOFFREY N. FIEGER, (P30441)  
REBECCA S. WALSH (P45331)  
VICTOR S. VALENTI (p36347)  
FIEGER, FIEGER, KENNEY & JOHNSON, P.C.

Attorneys for Claimant  
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**MOTION TO CLASSIFY CLAIM OF INTERESTED PARTY**  
**SHENNAE LEWIS AS A CLASS 2 CLAIM**  
**UNDER MCL 500.8142 PRIORITY OF DISTRIBUTION SCHEME**

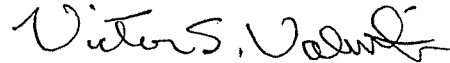
Shennae Lewis, Individually and as Next Friend of Tra' Markis Lewis, a Minor, as an Interested Party, by her attorneys, Fieger, Fieger, Kenney & Johnson, P.C., submits this Motion and accompanying Brief and Exhibit pursuant to this Court's February 28, 2005 Order directing Interested Parties to brief the issue of how claims in the Rehabilitation will be classed under Chapter 81 and paid in these Rehabilitation proceedings.

For the reasons fully set forth in the accompanying Brief, the Claim of Shennae Lewis should be classified as a Class 2 Claim under the classification scheme of MCL

500.8142(1).

Dated: April 20, 2005

Respectfully submitted,



GEOFFREY N. FIEGER (P30441)  
REBECCA S. WALSH (P45331)  
VICTOR S. VALENTI (P36347)  
FIEGER, FIEGER, KENNEY & JOHNSON, P.C.  
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Attorneys for Claimant  
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19390 W. Ten Mile Road  
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**BRIEF IN SUPPORT OF**  
**MOTION TO CLASSIFY CLAIM OF INTERESTED PARTY**  
**SHENNAE LEWIS AS A CLASS 2 CLAIM**  
**UNDER MCL 500.8142 PRIORITY OF DISTRIBUTION SCHEME**

**Introduction**

Contemporaneously with this Motion and Brief Shennae Lewis, an Interested Party, has filed a Proof of Claim (Exhibit 1) against The Wellness Plan pursuant to this Court's February 28, 2005 Order Setting Briefing Schedule And Establishing Notice Procedure With Respect To The Issue Of The Priority Of Provider Claims. Lewis, who was insured by The Wellness Plan, filed suit individually and as next friend of her son, Tra' Markis

Lewis, in the Wayne Circuit Court (Case No. 05-501641-NH) against Dr. M. Denson and Dr. Harold Arrington, who are believed to be agents in fact, ostensible agents and/or employees of The Wellness Plan. The lawsuit alleges professional negligence, and medical malpractice that resulted in personal injury to Shennae Lewis during labor and delivery and to Tra' Markis Lewis at the time of his birth on May 5, 2003.

For the reasons that follow, the Claim of Shennae Lewis should be classified as a Class 2 Claim under MCL 500.8142(1).

### Argument

Shennae Lewis has a claim against any policies of insurance The Wellness Plan held for errors and omissions/professional malpractice committed by The Wellness Plan or its agents in fact, ostensible agents or employees. The Claim should be classified as a Class 2 claim under the provision for "all claims under policies for losses incurred, including third party claims ... ."

MCL 500.8142(1)(b) provides in relevant part:

"[T]he priority of distribution of claims from the insurer's estate shall be in accordance with the order in which each class of claims is set forth in this section. Every claim in each class shall be paid in full or adequate funds retained for their payment before the members of the next class receive payment. Subclasses shall not be established within a class. The order of distribution of claims is as follows:

\* \* \*

(B) Class 2. Except as otherwise provided in this section, all claims under policies for losses incurred, including third party claims, . . .

\* \* \*



The Proof of Claim on behalf of Shennae Lewis clearly resides in Class 2. As an insured and a creditor of The Wellness Plan, Lewis is clearly also a “third party for purposes of the statute.” See for e.g.: MCL 500.811(2)(b); MCL 500.8138.

Section 8142 is based upon Section 47<sup>1</sup> of the Insurers Supervision, Rehabilitation and Liquidation Act which was promulgated by the National Association of Insurance Commissioners. The Model Act, with some adaptations, was based upon the Wisconsin Insurers Rehabilitation and Liquidation Act. The official comments of the Wisconsin act give an explanation of the purposes behind the particular classification of claim selected by the drafters of that act. According to these comments, the system of priority was chosen “based on the relative social and economic importance of the claims likely to be asserted against an insurer ... to carry out sound public policy by minimizing the damage done to the insured community when a insurer fails.” Quoted in State of Iowa v Iowa National Mutual Ins Co, 430 NW2d 420, 422-423 (Iowa 1988).

The progression of classes downward from Class 1 to Class 9 in Michigan’s §8142(1) demonstrates the legislative intent to first satisfy the costs and expenses of administration of the liquidation, second to pay for the claims of policyholders including third party claims, like the present Claim and then on down through government claims, to claims not under policies and general unsecured claims and remaining claims including finally those of shareholders. As other state appellate courts have explained, the equitable purpose of rehabilitation and liquidation is to protect policyholder consumers to the fullest

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<sup>1</sup> Section 47(CC) provides in relevant part that “All claims under policies ... for losses incurred, including the third party claims or covered obligations of the insurer.”

extent possible. Minor v Stephens 898 SW2d 71, 78 (Ky 1995); Neff v Cherokee Ins Co, 704 SW2d 1, 6 (Tenn 1986); State ex rel Long v Beacon Life Ins Co, 359 SE2d 508 (NC App 1987).

To that end, the supervision rehabilitation, and liquidation provisions of the insurance code, MCL 500.8101(2) and (3) provide in relevant part:

(2) This chapter shall be liberally construed to the effect the purpose stated in subsection (3).

(3) The purpose of this chapter is the protection of the interests of insureds, claimants, creditors, and the public . . .

Liberal (or equitable) construction “expands the meaning of the statute to meet cases which are clearly within the spirit or reason of the law, or within the evil which it was designed to remedy, providing such an interpretation is not inconsistent with the language used ... It means, not that the words should be forced out of their natural meaning, but simply that they should receive a fair and equitable interpretation with respect to the objects and purposes of the instrument.” Black’s Law Dictionary (6<sup>th</sup> ed 1990) pp 312-313.

While there is no Michigan authority construing the statute, cases from other jurisdictions construing states based on the Model Act are instructive. The language “claims under policies for losses incurred” defining Class 2 claims refers to consumer insurance policy claims. See Covington v Ohio General Ins Co, 99 Ohio St 3d 117 (2003)[holding claim under reinsurance agreement not a claim under policies for losses incurred even though O.R.C. 3903.42(B) did not specifically exclude reinsurance contracts unlike MCL 500.8142(1)(b)].

The plain intent of Class 2 is to benefit and protect insured members of the

unsuspecting public. This is demonstrated by the inclusion of guaranty associations in Class 2. These associations fund the payment of direct consumer insurance claims submitted by insureds when their insurance company has become insolvent. Covington, supra at 119. Likewise, a third type of Class 2 claim is a claim under a life insurance policy or annuity. These claims compensate individuals for losses that stem from the chance occurrences of life. Covington, supra at 120, citing Couch on Insurance (3d ed 1995). Cf. In the Matter of the Liquidation of National Family Ins Corp, 603 N2d 668 (Minn App 1999) [subrogation claims against insurer's policyholders which arose out of automobile accidents entitled to classification as "loss claims" under statutory category for losses incurred under Minn Stat. §60B44, Subd 4]. In short, the consumer protection aspect of Class 2 claims puts the Shennae Lewis Claim squarely in that category under §8142(1) directly behind the administrative expenses class of the rehabilitation/insolvency.

As one Pennsylvania court explained:

If, after all, insurance is to perform its function of risk assumption and distribution of loss, then those statutes which govern it must first protect the risks it contracted to assume. Rehabilitation and liquidation are of vital importance to the consumer, who relies in the first place on the industry itself and then on its regulators for protection. No one can dispute that that consumer is not possessed of equal bargaining power, knowledge, or resources as that [ ] of the other major creditor classes in this proceeding.

Grode v The Mutual Fire, Marine and Inland Insurance Co, 572 A.2d 798 (Pa Commw 1990). Here the plain language of §8142, liberally construed, compels the conclusion that the Claim of Shennae Lewis should be placed in Class 2 as a claim "under policies for losses incurred, including third party claims ... ."

**Relief Requested**

For all the foregoing reasons, the Claim of Interested Party Shennae Lewis should be classified and paid under Chapter 81, MCL 500.8142 as a Class 2 Claim.

Respectfully submitted,

Dated: April 20, 2005



GEOFFREY N. FIEGER (P30441)  
REBECCA S. WALSH (P45331)  
VICTOR S. VALENTI (P36347)  
FIEGER, FIEGER, KENNEY & JOHNSON, P.C.  
Attorneys for Claimant  
19390 W. Ten Mile Road  
Southfield, MI 48075-2463  
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# EXHIBIT

1

STATE OF MICHIGAN  
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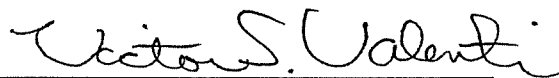
**PROOF OF CLAIM**  
**OF INTERESTED PARTY**  
**SHENNAE LEWIS**

Shennae Lewis, whose address is 3320 Clairmont, Detroit, Michigan 48206, Individually and as Next Friend of Tra' Markis Lewis, a Minor, by her attorneys, Fieger, Fieger, Kenney & Johnson, P.C., submits this Proof of Claim pursuant to MCR 500.8136 against The Wellness Plan and its agents in fact, ostensible agents and/or employees Dr. M. Denson and Dr. Harold Arrington arising out of the professional negligence, medical malpractice that resulted in personal injury to Shennae Lewis during labor and delivery and to Tra' Markis Lewis at the time of his birth on May 5, 2003. Additional specific facts

about the Claim are set forth in the attached Notice of Intent (Exhibit A) and Complaint (Exhibit B) which were originally filed in the Wayne County Circuit Court (Case No. 05-501641-NH) and assigned to the Hon. Robert L. Ziolkowski.

Lewis claims a right of priority of payment as a Class 2 claim under MCL 500.8142(1)(b).

The Claim is for an unliquidated amount in excess of \$25,000 and is contingent upon the outcome of the lawsuit or an amicable settlement.



GEOFFREY N. FIEGER (P30441)  
REBECCA S. WALSH (P45331)  
VICTOR S. VALENTI (P36347)  
FIEGER, FIEGER, KENNEY & JOHNSON, P.C.  
Attorney for Claimant  
19390 W. Ten Mile Road  
Southfield, MI 48075  
(248) 355-5555

Dated: April 20, 2005

# EXHIBIT

A



## **SECTION 2912b NOTICE OF INTENT TO FILE CLAIM**

**This notice is intended to apply to the following health care professionals, entities, and/or facilities as well as their professional corporations and any employees or agents, actual or ostensible, thereof, who were involved in the treatment of the patient, Shennae Lewis.**

WSU/DMC; Hutzel Hospital; Dr. M. Denson; Dr. Harold Arrington; Dr. Hill #7419; and all nurses caring for Shennae Lewis during her labor and delivery of her son Tremarkis Lewis on May 5, 2003.

### **1. FACTUAL BASIS FOR CLAIM**

This cause of action is for medical malpractice committed upon Shennae Lewis and Tremarkis Lewis during the labor and delivery of Tremarkis.

Shennae Lewis was pregnant with an estimated date of confinement of May 7, 2003. During her pregnancy she developed gestational diabetes. She was treated for the gestational diabetes during her prenatal treatment at the Wellness Plan. On May 5, 2003 at 7:00 a.m., she was admitted to Hutzel Hospital for induction of labor due to the gestational diabetes.

During the course of the day, on May 5, 2003, Shennae Lewis was being monitored by a fetal heart monitor, both internal and external. During the course of the labor, Shennae Lewis' fetal heart monitor strip showed significant decelerations, primarily late decelerations. In addition, based upon the entire fetal monitor strip, it was apparent that the fetal heart monitor strip was non reassuring and that Tremarkis Lewis was in fetal distress. During the time of the laboring process, Shennae Lewis was treated by the doctors named above, as well as nurses which were provided by Hutzel Hospital. All of the doctors and nurses who treated Shennae and Tremarkis Lewis were agents and/or employees of Hutzel Hospital and the Detroit, Medical Center. Despite the non-reassuring fetal heart tones throughout the afternoon and evening of May 5, 2003, a emergency cesarean section was not called until after 11:00 p.m. Shennae Lewis' baby was delivered on May 5, 2003 at 11:47 p.m. Both venous and arterial blood PH's were drawn of the baby at 11:55 p.m. and showed a venous PH of 7.09 and arterial PH of 7.00, indicated that the baby had suffered significant hypoxic ischemic encephalopathy as a result of the failure by the above-named physicians to deliver the baby by cesarean section earlier.

During the initial days of life, the baby was diagnosed with a severe birth asphyxia, seizures hypoxic ischemic encephalopathy, hypoxic encephalopathy, injuries to the scalp due to birth trauma and depressed neurologic status. As a result of the hypoxic ischemic encephalopathy, the baby was put into an induced hypothermia trial. Tremarkis continues to have significant delays, and will suffer from permanent brain injuries as a result of the failure to timely deliver him.

**2. THE APPLICABLE STANDARD OF PRACTICE OR CARE ALLEGED**

The standard of care required by all doctors and institutions listed in this Notice of Intent to File Claim is as follows:

- a. Properly assess and evaluation a woman in labor
- b. Properly assess, evaluate and treat a woman in labor who shows signs of intrauterine fetal distress.
- c. Properly and timely perform a cesarean section to deliver a child who is in obvious fetal distress before he suffers from hypoxic ischemic encephalopathy.
- d. Appropriately monitor a patient while in the laboring process.
- e. Take appropriate steps to protect a fetus when signs of fetal distress are apparent until such time as a cesarean section can be performed.
- f. Any other breaches of the standard of care which may be revealed over the course of discovery should the litigation be pursued.

The standard of care required by all nurses and institutions listed in this Notice of Intent to File Claim is as follows:

- a. Properly assess and evaluation a woman in labor.
- b. Properly monitor a woman in labor, particularly noting the fetal heart monitor strips.
- c. Timely and appropriately notify physicians of abnormal fetal heart monitor tracings.
- d. Properly observe a woman in labor who baby is showing signs of fetal distress.
- e. Take appropriate steps to protect a fetus when signs of fetal distress are apparent until such time as a cesarean section can be performed.
- f. Any other breaches of the standard of care which may be revealed over the course of discovery should the litigation be pursued.

3. **THE MANNER IN WHICH IT IS CLAIMED THAT THE APPLICABLE STANDARD OF PRACTICE OR CARE WAS BREACHED**

The above-mentioned hospitals, physicians and facilities, including staff members of the hospital and facilities failed to:

- a. Properly assess and evaluation a woman in labor
- b. Properly assess, evaluate and treat a woman in labor who shows signs of intrauterine fetal distress.
- c. Properly and timely perform a cesarean section to deliver a child who is in obvious fetal distress before he suffers from hypoxic ischemic encephalopathy.
- d. Appropriately monitor a patient while in the laboring process.
- e. Take appropriate steps to protect a fetus when signs of fetal distress are apparent until such time as a cesarean section can be performed.
- f. Any other breaches of the standard of care which may be revealed over the course of discovery should the litigation be pursued.

The above-mentioned hospitals, nurses, including staff members of the hospital and facilities failed to:

- a. Properly assess and evaluation a woman in labor.
- b. Properly monitor a woman in labor, particularly noting the fetal heart monitor strips.
- c. Timely and appropriately notify physicians of abnormal fetal heart monitor tracings.
- d. Properly observe a woman in labor who baby is showing signs of fetal distress.
- e. Take appropriate steps to protect a fetus when signs of fetal distress are apparent until such time as a cesarean section can be performed.
- f. Any other breaches of the standard of care which may be revealed over the course of discovery should the litigation be pursued.

4. **THE ACTION THAT SHOULD HAVE BEEN TAKEN TO ACHIEVE COMPLIANCE WITH THE STANDARD OF PRACTICE OR CARE.**

The above mentioned physicians and/or institutions, including staff members, should have:

- a. Properly assess and evaluation a woman in labor
- b. Properly assess, evaluate and treat a woman in labor who shows signs of intrauterine fetal distress.
- c. Properly and timely perform a cesarean section to deliver a child who is in obvious fetal distress before he suffers from hypoxic ischemic encephalopathy.
- d. Appropriately monitor a patient while in the laboring process.
- e. Take appropriate steps to protect a fetus when signs of fetal distress are apparent until such time as a cesarean section can be performed.
- f. Any other breaches of the standard of care which may be revealed over the course of discovery should the litigation be pursued.

The above mentioned nurses and/or institutions, including staff members, should have:

- a. Properly assess and evaluation a woman in labor.
- b. Properly monitor a woman in labor, particularly noting the fetal heart monitor strips.
- c. Timely and appropriately notify physicians of abnormal fetal heart monitor tracings.
- d. Properly observe a woman in labor who baby is showing signs of fetal distress.
- e. Take appropriate steps to protect a fetus when signs of fetal distress are apparent until such time as a cesarean section can be performed.
- f. Any other breaches of the standard of care which may be revealed over the course of discovery should the litigation be pursued.

5. **THE MANNER IN WHICH THE BREACH WAS THE PROXIMATE CAUSE OF THE CLAIMED INJURY**

As a result of the negligence of the above-named physicians, nurses, institutions, entities and staff, as outlined above, Tre-Markis Lewis suffered from hypoxic ischemic encephalopathy, perinatal distress, and now will face multiple medical complications, including global developmental delays and permanent brain damage.

Had the above-named physicians, entities nurses and staff complied with the standard of case as outlined above, Tre-Markis Lewis would not have suffered from the above mentioned injuries, which were a direct result of the negligence of the above-named parties.

Further, Tre-Markis Lewis and his mother, will incur large medical expenses for future medical treatment and he will be unable to have a normal working life with associated income thereto, and has suffered a loss of earning capacity.

6. **NAMES OF HEALTH PROFESSIONALS, ENTITIES, AND FACILITIES NOTIFIED:**

WSU/DMC; Hutzel Hospital; Dr. M. Denson; Dr. Harold Arrington; Dr. Hill #7419; and all nurses caring for Shennae Lewis during her labor and delivery of her son Tremarkis Lewis on May 5, 2003.

TO THOSE RECEIVING NOTICE: YOU SHOULD FURNISH THIS NOTICE TO ANY PERSON, ENTITY OR FACILITY, NOT SPECIFICALLY NAMED HEREIN THAT YOU REASONABLY BELIEVE MIGHT BE ENCOMPASSED IN THIS CLAIM.

FURTHER, YOU ARE REQUESTED TO PRODUCE ANY AND ALL RECORDS REGARDING LATRICE MCCOY AND MARCUS RICKS AND THEIR TREATMENT, INCLUDING, BUT NOT LIMITED TO THE FOLLOWING:

- A. THE MEDICAL STAFF LIST TO INCLUDE ALL NURSING STAFF;
- B. THE OB/GYN NURSING CALL LIST FOR MAY 5, 2003;

C. ALL REPORTS, NOTES, RECORDS, MEMOS,  
BILLINGS, RADIOGRAPHIC STUDIES, X-RAYS,  
PROGRESS NOTES, NURSING NOTES, ETC.

Respectfully submitted,

FIEGER, FIEGER, KENNEY & JOHNSON, P.C.

---

GEOFFREY NELS FIEGER (P30441)

REBECCA S. WALSH (P45331)

Attorneys for Plaintiffs

19390 W. Ten Mile Road

Southfield, MI 48075

(248) 355-5555

Dated: August 16, 2004

# **EXHIBIT**

## **B**

**STATE OF MICHIGAN**

**IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE**

SHENNAE LEWIS, Individually and  
as Next Friend of TRA'MARKIS LEWIS, a Minor;

Plaintiffs,

Case No.: 05-  
Hon.

-NM

v

DMC/WSU; HUTZEL HOSPITAL;  
DR. M. DENSON; DR. HAROLD ARRINGTON;  
DR. HILL, Jointly and Severally,

Defendants.

\_\_\_\_\_  
GEOFFREY NELS FIEGER (P-30441)  
REBECCA S. WALSH (P-45331)  
FIEGER, FIEGER, SCHWARTZ, & KENNEY, P.C.  
Attorneys for Plaintiff  
19390 W. Ten Mile Road  
Southfield, Michigan 48075  
(248) 355-5555  
\_\_\_\_\_

**COMPLAINT AND DEMAND FOR JURY**

There is no other civil action between these parties  
arising out of the same transaction or occurrence  
alleged in this Complaint.

NOW COMES the Plaintiff, SHENNAE LEWIS, Individually and as Next Friend of  
TRA'MARKIS LEWIS, a Minor, by and through her attorneys FIEGER, FIEGER, KENNEY &  
JOHNSON, P.C., and for her complaint against the above-named Defendants states unto this  
Honorable Court as follows:

1. The Plaintiff, Shennae Lewis is a resident of Wayne County, State of  
Michigan.



2. Defendant, Dr. M. Denson, (hereinafter “Denson”) is a physician licensed to practice medicine in the State of Michigan, who conducted business in the County of Wayne, State of Michigan.

3. Defendant, Dr. Arrington, (hereinafter “Arrington”) is a physician licensed to practice medicine in the State of Michigan, who conducted business in the County of Wayne, State of Michigan.

4. Defendant, Dr. Hill, (hereinafter “Hill”) is a physician licensed to practice medicine in the State of Michigan, who conducted business in the County of Wayne, State of Michigan.

5. Defendant, DMC/WSU is a Michigan Corporation authorized to do business in the State of Michigan.

6. Defendant HUTZEL HOSPITAL (hereinafter “HUTZEL”) is a Michigan Corporation authorized to do business in the State of Michigan.

6. That at all times relevant hereto, a special and unidentified relationship existed between Defendants DENSON, ARRINGTON, and HILL and Defendant HUTZEL.

7. That at all times relevant hereto, Defendant HUTZEL did hold itself out to the public in general and to the Plaintiff, Shennae Lewis in particular, as being a safe place for business, an institution of healing, and that its agents, servants, independent contractors and/or employees, including Defendants DENSON, ARRINGTON, and HILL would perform necessary and proper medical care in accordance with the applicable standards of care in the community.

8. That at all times relevant hereto, Defendants DENSON, ARRINGTON, and HILL were the actual or apparent/ostensible agents or servants of Defendant HUTZEL or in the alternative, Defendant HUTZEL was the employer of Defendants DENSON, ARRINGTON, and

HILL.

9. That Defendant HUTZEL its owner, operator and governing body are responsible for the operation of its hospital, the selection of its medical staff, and the quality of care rendered by its physicians ( MCLA 333.21513).

10. That all of the Defendants are agents, servants, and employees of each other; that Defendant hospital is the agent, servant and employee of the doctors; that the Defendant doctors are agents, servants and employees of the hospital; and finally, all agents, servants and employees of the hospital are agents, servants and employees of the Defendant doctors.

11. That the amount in controversy exceeds Twenty-five Thousand (\$25,000) exclusive of costs, interest and attorneys fees.

12. This cause of action is for medical malpractice committed upon Shennae Lewis and Tra'markis Lewis during the labor and delivery of Tra'markis.

13. Shennae Lewis was pregnant with an estimated date of confinement of May 7, 2003.

14. During her pregnancy she developed gestational diabetes.

15. She was treated for the gestational diabetes during her prenatal treatment at the Wellness Plan.

16. On May 5, 2003 at 7:00 a.m., she was admitted to Hutzel Hospital for induction of labor due to the gestational diabetes.

17. During the course of the day, on May 5, 2003, Shennae Lewis was being monitored by a fetal heart monitor, both internal and external.

18. During the course of the labor, Shennae Lewis' fetal heart monitor strip showed significant late decelerations.

19. In addition, based upon the entire fetal monitor strip, it was apparent that the fetal heart monitor strip was non-reassuring and that Tra'markis Lewis was in fetal distress.

20. During the time of the laboring process, Shennae Lewis was treated by the doctors named above, as well as nurses which were provided by Hutzel Hospital.

21. All of the doctors and nurses who treated Shennae and Tra'markis Lewis were agents and/or employees of Hutzel Hospital and the Detroit, Medical Center.

22. Despite the non-reassuring fetal heart tones throughout the afternoon and evening of May 5, 2003, an emergency cesarean section was not called until after 11:00 p.m.

23. Shennae Lewis' baby was delivered on May 5, 2003 at 11:47 p.m.

24. Both venous and arterial blood PH's were drawn of the baby at 11:55 p.m. and showed a venous PH of 7.09 and arterial PH of 7.00.

25. During the initial days of life, the baby was diagnosed with a severe birth asphyxia, seizures, hypoxic ischemic encephalopathy, hypoxic encephalopathy, injuries to the scalp due to birth trauma and depressed neurologic status.

26. Tra'markis continues to have significant delays, and will suffer from permanent brain injuries as a result of the failure to timely deliver him.

## COUNT I

### **NEGLIGENCE, GROSS NEGLIGENCE AND/OR WANTON OR WILLFUL MISCONDUCT OF DEFENDANTS DENSON, ARRINGTON, and HILL**

27. That Plaintiff hereby repeats and realleges fully paragraphs 1 - 26 as if fully stated herein.

28. That at all times relevant hereto, Defendants DENSON, ARRINGTON, and HILL and each of them undertook and had a duty to provide Plaintiffs, Shennae Lewis and Tra'Markis

Lewis, with competent services and with qualified and licensed physicians, surgeons, nurses and other employees who would treat his condition, render competent advice, diagnosis, assistance and treatment to the Plaintiffs and that such care and treatment would at all times be in accordance with the standards of acceptable medical practice in the community.

29. That notwithstanding the above-mentioned duties to utilize reasonable care and diligence in exercising the skill and learning which Defendants DENSON, ARRINGTON, and HILL have represented to possess as licensed physicians in the State of Michigan, Defendants DENSON, ARRINGTON, and HILL did, through various acts or omissions, breach those duties and acted contrary to acceptable standards of professional practice, and were thus professionally negligent and/or committed wilful and wanton misconduct pursuant to Michigan jurisprudence, and that such negligence and/or wilful and wanton misconduct include, by way of illustration and not limitation the following:

- a. Failing to properly assess and evaluation a woman in labor.
- b. Failing to properly assess, evaluate and treat a woman in labor who shows signs of intrauterine fetal distress.
- c. Failing to properly and timely perform a cesarean section to deliver a child who is in obvious fetal distress before he suffers from hypoxic ischemic encephalopathy.
- d. Failing to appropriately monitor a patient while in the laboring process.
- e. Failing to take appropriate steps to protect a fetus when signs of fetal distress are apparent until such time as a cesarean section can be performed.
- f. Any other breaches of the standard of care which may be revealed over the course of discovery should the litigation be pursued.

30. That as a direct and proximate result of the Defendants' DENSON, ARRINGTON, and HILL acts and/or omissions, the Plaintiff Tra'Markis Lewis, suffered serious injuries and complications, including but not limited to:

signs of intrauterine fetal distress.

- c. Failing to properly and timely perform a cesarean section to deliver a child who is in obvious fetal distress before he suffers from hypoxic ischemic encephalopathy.
- d. Failing to appropriately monitor a patient while in the laboring process.
- e. Failing to take appropriate steps to protect a fetus when signs of fetal distress are apparent until such time as a cesarean section can be performed.
- f. Failure to comply with MCL 333.21513; and
- g. Any other breaches of the standard of care which may be revealed over the course of discovery should the litigation be pursued.

36. That as a direct and proximate result of the Defendants' HUTZEL acts and/or omissions, the Plaintiff Tra'Markis Lewis, suffered serious injuries and complications, including but not limited to:

- a. hypoxic ischemic encephalopathy
- b. fetal distress;
- c. multiple medical complications;
- d. global developmental delays;
- e. asphyxia;
- f. seizures;
- g. permanent brain damage and cerebral palsy;
- h. physical pain and suffering;
- i. mental anguish;
- j. fright and shock;
- k. denial of social pleasure and enjoyments;
- l. embarrassment, humiliation or mortification;

- m. reasonable expenses of necessary medical care, treatment and services;
- n. wage loss and loss of earning capacity; and
- o. any and all other damages deemed to be reasonable and just.

WHEREFORE, Plaintiff Shennae Lewis, as Next Friend of Tra'Markis Lewis, a Minor, respectfully requests that this Honorable Court enter Judgment in their favor and against Defendant Doctors, and award costs, interest and attorney fees wrongfully incurred.

Respectfully submitted,

FIEGER, FIEGER, KENNEY & JOHNSON, P.C.

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GEOFFREY NELS FIEGER (P30441)

REBECCA S. WALSH (P45331)

Attorneys for Plaintiff

19390 W. Ten Mile Road

Southfield, MI 48075

(248) 355-5555

Dated: January 18, 2005

**STATE OF MICHIGAN**

**IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE**

SHENNAE LEWIS, Individually and  
as Next Friend of TRA'MARKIS LEWIS, a Minor,

Plaintiffs,

Case No.: 05-  
Hon.

-NM

v

DMC/WSU; HUTZEL HOSPITAL;  
DR. M. DENSON; DR. HAROLD ARRINGTON;  
DR. HILL, Jointly and Severally,

Defendants.

\_\_\_\_\_  
GEOFFREY NELS FIEGER (P-30441)  
REBECCA S. WALSH (P-45331)  
FIEGER, FIEGER, KENNEY & JOHNSON, P.C.  
Attorneys for Plaintiff  
19390 W. Ten Mile Road  
Southfield, Michigan 48075  
(248) 355-5555  
\_\_\_\_\_

**DEMAND FOR TRIAL BY JURY**

NOW COME the Plaintiffs, SHENNAE LEWIS, Individually and as Next Friend of TRA'MARKIS LEWIS, a Minor, by and through their attorneys, FIEGER, FIEGER, KENNEY & JOHNSON, P.C., and hereby demand a trial by jury in the above-captioned matter.

Respectfully submitted,  
FIEGER, FIEGER, KENNEY & JOHNSON, P.C.,

\_\_\_\_\_  
GEOFFREY N. FIEGER (P30441)  
REBECCA S. WALSH (P45331)  
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Date: January 18, 2005

FIEGER, FIEGER, KENNEY & JOHNSON • A PROFESSIONAL CORPORATION • ATTORNEYS AND COUNSELORS AT LAW • 19390 WEST TEN MILE ROAD • SOUTHFIELD, MICHIGAN 48075-2463 • TELEPHONE (248) 355-5555 • FAX (248) 355-5148

STATE OF MICHIGAN  
CIRCUIT COURT FOR THE 30<sup>TH</sup> JUDICIAL DISTRICT  
INGHAM COUNTY

LINDA A. WATTERS, COMMISSIONER,  
OFFICE OF FINANCIAL AND INSURANCE SERVICES  
FOR THE STATE OF MICHIGAN,

Petitioner,

vs.

File No. 03-1127-CR

THE WELLNESS PLAN,  
a Michigan Health Maintenance Organization,

Hon. William E. Collette

Respondent.

---

GEOFFREY N. FIEGER (P30441)  
REBECCA S. WALSH (P45331)  
VICTOR S. VALENTI (P36347)  
Attorneys for Claimant  
FIEGER, FIEGER, KENNEY & JOHNSON, P.C.  
19390 W. Ten Mile Road  
Southfield, MI 48075  
(248) 355-5555

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**PROOF OF SERVICE**

STATE OF MICHIGAN     )  
                                      ) SS  
COUNTY OF OAKLAND    )

VICTOR S. VALENTI, being first duly sworn, deposes and says that he is an attorney with the law firm of Fieger, Fieger, Kenney & Johnson, P.C., and that on April 20, 2005, he served copies of Notice of Appearance, Appearance of counsel, Proof of Claim, Motion to Classify Claim of Interested Party Shennae Lewis as a Class 2 Claim Under MCL 500.8142 Priority of Distribution Scheme and Proof of Service upon:



Honorable William E. Collette  
Ingham County Circuit Court  
3<sup>rd</sup> Floor, Mason Courthouse  
Mason, Michigan 48854

Wilson A. Copeland, II, Esq.  
Grier & Copeland  
615 Griswold Street #400  
Detroit, Michigan 48226


Mark Zausmer, Esq.  
Zausmer, Kaufman, August & Caldwell, P.C.  
31700 Middlebelt Road #150  
Farmington Hills, MI 48334

by enclosing copies of same in envelopes with first class postage fully prepaid thereon and  
depositing them in the United States mail at Southfield, Michigan.



VICTOR S. VALENTI

Subscribed and sworn to before me on April 20, 2005.



Kristine A. Gnagey, Notary Public,  
Wayne County, Michigan  
My Commission Expires: 9/4/2005